CHARGE

Given to the

GRAND-JURY,

At the

General Quarter-Sessions of the Peace,

Holden at

St. EDMUNDS-BURY for the Liberty thereof;

IN THE

County of *SUFFOLK:*

On the 11th of *October*, *An. Dom.* 1725.

By MAURICE SHELTON, *Esq;*

Of *Barningham-Hall:* One of His MAJESTY's Justices of the Peace for the said County.

Quid Honestius quàm Docere quod optimè Scias? Quintil.

HOC est ILLUD.

LONDON:

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OCT 12 1908

TO THE

READER.

THO' neither the Gentlemen of the Grand-Jury, to whom it was particularly delivered, nor my Brethren-Justices of the Peace, who were upon the Bench at the same time and heard it, would vouchsafe to request of me an Impression of this Charge; yet had I the Heart to publish it to the World of my own accord, induced hereunto not by a Principle of Vanity, Ostentation, or Self-Conceit, nor by a Prospect of any future Profit, but by a natural Disposition to do what Good and Service I could to the Publick within the Compass of my Sphere

and Capacity; not doubting but this Charge would meet with a better Reception abroad, than it has unaccountably and ſurprizingly happened on at Home. That it is wholly free from Faults, I ſhall not preſumptuouſly or arrogantly take it upon me to juſtify; but that it contains Capital or Firſt-Rate Ones, I am not willing to allow: And ſince Humanum eſt Errare, *I ſhall ſit quietly down under Publick Cenſure, and be entirely eaſy upon that account. Such therefore as it is, I preſent it (Candid Reader!) to your Peruſal, without a longer Preface or farther Apologies, comparing the latter not unaptly to the Cypreſs-Trees, which indeed are High and Lofty, but yield no Fruit.*

Yours in all Humility,

M. S.

Gentlemen of the Grand Jury!

AS often as I have the Honour to be Chairman of this Court, I ſhall think it an indiſpenſable Duty, which the (*a*) Oath of my Office lays upon Me, to give you ſuch Articles and Things in Charge as are proper for your Inquiry, and which the Commiſſion of the Peace and divers Statutes do authorize to be Heard and Determined here. The Nature and Intent of a Charge are to Inſtruct and Inform the Jury how to Act in that great and weighty Affair that lies before Them; it is a full and regular Draught of their Inquiries and Preſentments, without which They would be apt to pretend Ignorance, and excuſe Themſelves for not knowing many Things, by ſaying, they were not given them in Charge to Inquire of them: So that as we are both equally bound by an Oath (you Jurors to Inquire of all ſuch Matters and Things as you ſhall have Directions for, and I, as Chairman, to declare what is Inquirable by You) I cannot well ſee (for my own Part) how I (who am to Inform you) can be ſafely diſcharged, or You (who are to Hear and give diligent Attention) can be ſufficiently Inſtructed and made Knowing in your Buſineſs without a Charge, which (containing only the chief Subſtance thereof) I ſhall endeavour to deliver to You in

(*a*) *So* Fitzherbert *and* Lambard *in their Books of the Office of a Juſtice of the Peace do declare it to be their Opinions, which I think cannot be fairly gainſayed.*

as Conciſe and Plain a Method as I can. Nor am I without Hopes, (Gentlemen) that your Duty told and explained to You from the Chair may (in all Probability, I am ſure there is the greateſt Reaſon it ſhould,) move You more, be of greater Efficacy and Force with You, make a deeper Impreſſion upon your Minds, and be more Serviceable to You, than the ſlight and curſory Reading, or (I may rather call it) indiſtinct and unintelligible Hurrying or Running over here and there an Article of it out of a Book by the Clerk of the Peace, or than even your own injudicious Peruſal of the Book itſelf, thrown to You ſometimes (after an odd manner) for that Purpoſe; which way of Acting (or Managing) I could not forbear taking notice of, as being highly derogatory from the Dignity and Honour of this Court, contrary to the Decorum, Decency, and good Order that ought ſtrictly to be obſerved here, not half ſo Inſtructive and Profitable to You Jurors, and making us Juſtices of the Peace (without Offence I preſume be it ſpoken) look very Little and Ridiculous, not only in the Eyes of All who are here Preſent, but even in the Eye of the whole World.

THO' I ſhall not trouble nor detain You with a nice and tedious Diſcourſe about the Original of Government, nor acquaint You with the ſeveral, different Forms of it that prevail in various Parts of the Earth at this day, (ſince by ſo doing I ſhould not only draw out my Charge to a greater Length than I intended, but it would be a needleſs Piece of Work of itſelf, better becoming thoſe Oracles of the Law, the Juſtices of Aſſiſe in the general Aſſiſes of their Circuits,) yet a ſhort and uſeful Introduction before I enter upon the Heads of your Inquiry, would not (I think) be amiſs.

GOVERNMENT in general is (as St. *Paul* calls it Θεῦ διαταγή,) a Divine Inſtitution, but the Species of it (whether this or that ſort) is (according to (*b*) St. *Peter*, κτίσις ἀνθρωπίνη) a mere (*c*) Human Ordinance or Conſtitution, God not com-

(*b*) 2. 13. (*c*) *For ſo the Supream Power is called, where-ever it is lodged. Civil Power is called a Divine Ordinance for no other reaſon but becauſe God did approve thereof, as ſuitable and convenient for the Good of Mankind; but when God does approve of an Human Law, He muſt be ſuppoſed to do it as Human, and after an Human Manner.* (Grotius de Jure Belli & Pacis, lib. 1. cap. 4. Sect. 7. N. 3.)

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manding nor injoining any particular Form, but leaving it wholly to the Will and Pleaſure of the People to chuſe and fix upon what Kind of Government They like beſt, not concerning Himſelf any further in this Caſe than by barely giving his Permiſſion. And as the People (having once ſubmitted to be ruled) have (by God's Providence or Permiſſion only) a Power to chuſe their own Government, ſo conſequently have They the ſame Power to frame and make ſuch Laws as They think moſt conducive to the Support and Maintenance of the Government They have made choice of. Nor is it to be doubted but that this Power of theirs extends even to the changing of their Government, the Repealing and Altering of their Laws, when They find Themſelves moved to it by juſt Cauſes, and for Wiſe and Good Ends, which Power (taken and allowed of in its full Latitude) ſhould I derive from God, as his Grant, or Gift to the People, (either of which implies more than his bare Permiſſion only) I am poſitive I ſhould not err.

THE great Diverſity in the Form of Sovereign Governments is a ſufficient Argument of itſelf that Sovereign Magiſtrates derive not their Inſtitution immediately from God, otherwiſe there would be but one particular Regimen prevailing over the Face of the whole Earth; ſo that tho' God indeed hath inſtituted Sovereignty in general, yet He granted, or gave to the People the Power of Determining the Form of it, according to their Neceſſities, their Inclinations, and the Circumſtances They are under. 'Tis a Difference of Opinions that (according to *Ariſtotle*'s Policy) is the true Cauſe of the various Governments in the World, with which ſeveral Philoſophers, Lawyers, and Divines do unanimouſly concur. Therefore mutual Compacts (or Agreements) muſt (more or leſs) be the Original of them all, unleſs God doth Himſelf immediately appoint a Magiſtrate, and then the People have uſually conformed, as in the Caſes of *Saul* and *David*. To illuſtrate this Matter to You, take what follows.

THE Children of *Iſrael* (ſaith *Forteſcue* in his excellent Treatiſe of Abſolute and Limited Monarchy) after They were choſen *in Populum Peculiarem & Regnum Sacerdotale*, were govern'd by God Himſelf under Judges, *Regaliter & Politicè*,

 Royally

Royally and Politickly, (*i. e.* after the manner of a limited Monarchy,) till the time that They desired to have a King of their own set over Them, as all the *Gentiles* (or Neighbour-Nations) then had, a mere Man, who Reigned over Them *Regalitèr tantùm*, Royally only, (*i. e.* Absolutely.) This Desire of theirs (tho' grounded, it seems, upon the Male-Administration of *Samuel*'s Sons) manifesting their Folly and Ingratitude to God, (who had before declared Himself solemnly their King, in Giving Them Laws, Leading their Armies, *&c.*) so highly offended Him, that first, He threatned and affrighted Them with Thunder and other terrible Things from Heaven, which not working upon Them the intended Effect, He then sent *Samuel* (his Prophet) to Them, to declare to Them the Law of such a King as they asked, (as may be seen in the 8th Chapter of the 1st Book of (*d*) *Samuel*,) *i. e.* of a Tyrant, whose Will was his Law, (according to the general Opinion of the Learned,) not of a King, *Qui sic dicitur à Regendo*, who is called so from governing his People with Justice, Wisdom, and Gentleness, without Oppression, and from Protecting Them with all his Skill and Power. Truly it appears plain enough to my mean Capacity, that *Samuel* does not declare the lawful Right of Kings, but a Tyrannical, Usurped, and Arrogated One in this Place, what he says here of Kings, being very different from the Description He gives Us of a King by *Moses* in the 17th of *Deuteronomy*; so that He only holds forth this Looking-Glass to Them (as I take it,) to make Them quit (if possible) their Demand of having such a King set over Them as the rest of the Nations had. But They not regarding the Menaces of the Great God, the King of Kings, (whose Government They had sinfully rejected,) nor the Remonstrances of his Servant and Prophet *Samuel*, and persisting obstinately in their Demand of a King, God did at length order *Samuel* to hearken to Them and make them a King, who, provided He was an *Israelite*, One of their Brethren, (Strangers being excluded,) and chosen by Lot, (to shew that the Appointment was immediately from God) might be whom They would, and the Lot fell upon *Saul*. Yet tho' God allotted Him the Crown, tho' He was

(*d*) *Of* Kings, *in* Fortescue's *Treatise beforemention'd* (*lately publish'd by this present Judge* Fortescue, *with learned Notes upon it, and a learned Preface to the same,*) *which is plainly an Errour of the Press.*

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Anointed by *Samuel*, and Proclaimed King at *Mizpah*, He would not take upon Him the adminiſtration of Regal Government till He was Created and Proclaimed ſo a ſecond time at *Gilgal*, but went about his private Affairs as before, thinking it abſolutely neceſſary to have the general Conſent of the People, and to Know from Them upon what Terms (or Conditions) He was to Govern them firſt. So in the Caſe of *David*, the People made a League with Him before His Inauguration, by which they reſtrained and bound Him up as They thought fit. Since therefore the Regal Inſtitution in *Iſrael* was an immediate Act of God for particular Ends, reſpecting only that Society, (aboliſh'd by an Order of Providence, which hath wholly deſtroyed the State of the *Jews*, and the Right of their Kings,) and the ſame cannot be ſaid of other Sovereigns, (for I defy any One to produce ſuch another Inſtance, as that any King of any other Nation but the *Jewiſh* ever attained to his Crown after that manner;) ſince God, even by this immediate Act of His, (which was againſt His Will,) impos'd not an arbitrary Government upon the *Iſraelites*, (for He had ſet bounds to the Regal Power long before there was a King in *Iſrael*;) by excluding Them from Voting for, Conſenting to, and Covenanting with the Man whom He had nominated and appointed their King; it naturally follows, that the Power of chuſing the Form of their Government, of making Laws, and of changing Either or Both as They find Occaſion, is wholly and ſolely in the People, and in every Individual of that Body *ab Origine*, (which is what we call Liberty, and Liberty in Perfection,) and that Monarchy, limited and circumſcribed by Laws, (not Abſolute,) ſeems to be the very Species of Government, approved of and recommended to Us by God before any other, He Himſelf having exerciſed the ſame over the Children of *Iſrael*, not only under Judges, but Kings too, as beſt anſwering the Ends for which all Governments are inſtituted, (*viz.*) the Happineſs, Welfare, Safety and Eaſe of the Governed.

It is time now, (Gentlemen!) I muſt confeſs, to draw to a Concluſion of this Introduction, which has already exceeded the Bounds of the Brevity I at firſt propoſed, and to fall immediately upon the Articles of your Inquiry; but as I cannot handſomely paſs by our own Government in Silence, without glancing,

glancing a little upon the Conſtitution of it Hiſtorically, without ſaying ſomething in Praiſe of it, and of the Laws that uphold it, and without urging a ſtrict and diligent Execution of the latter, I muſt treſpaſs upon your Patience till I have diſcharged Myſelf of theſe three Points, and then I ſhall proceed out of hand to what more immediately relates to you, in as brief a manner as You would wiſh.

As it hath been made Evident to You from Scripture (without wreſting any Part of it to my own Purpoſe) that the Kings of *Iſrael* (tho' immediately deſign'd by God) were not eſtabliſhed upon that Throne till the People had given their Conſent, and had Covenanted with Them; ſo it may be made out as clear to You from the Hiſtory of our own Nation, (whereof I ſhall give you a few Sketches,) that the People always choſe Their own Kings and made Compacts with Them, before ever They ſuffered Them to Rule over Them. If we conſider the moſt remote Times that Hiſtory gives Us any Account of, we ſhall find that the ancient *Britons* choſe Their Kings, and that They were not Abſolute. *Vortigern* (who adviſed the bringing in of the *Saxons*) came to the Crown by Election, but was depoſed for having married his own Daughter, and his Son (*Vortimer*) placed upon the Throne in his ſtead. The *Saxons* (as great Lovers of Liberty as the Other) followed the Example of the ancient *Germans*, whoſe Authority (according to *Cæſar* and *Tacitus*) was altogether limited and reſtrained. We are told in the (*e*) Mirrour of Juſtices, that the firſt *Saxons* Created their Kings, that They made Them take an Oath, and that They put Them in mind that They were as liable to be Judged as their meaneſt Subjects.

The Deſcription that *Bacon* (*f*) gives Us of a *Saxon* King, (in his Hiſtorical Account of the Uniformity of the Government of *England*,) relating to his Office, Election, Oath and Power, being well worth your Knowledge, I ſhall deliver it to you in his own Terms, almoſt *verbatim*. A *Saxon* King was at firſt

(*e*) *In the* 1*ſt* Chapter *and* 2*d* Section. *A Book cited by many of the Grave Sages of our Publick Laws, as containing the Fundamental Ones.*

(*f*) Nathaniel Bacon *of* Gray's-Inn, *Eſq; in the firſt Part of his Hiſtorical Account, printed* A. D. 1647.

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but a Commander in the Field (or a General) an Officer *pro tempore* only, and no neceſſary Member in the Conſtitution of their State, for the Wars being ended, his Office determined of Courſe. But upon the Tranſmigration of theſe People into *Britain*, the Continuance of the War requiring the conſtant Service of the General, made that Place to ſettle and ſwell into the Condition of a King; and ſo He who was formerly *Dux* became *Rex*, there being no more difference in the nature of their Places than in the Senſe of the Words themſelves, the One ſignifying to Lead, and the Other to Govern; and ſo He who before was a Servant Occaſionally, became One afterwards for Life. His Title ſeemed to reſt chiefly upon the good Opinion of the Free-Men, whereby He was declared to be moſt worthy of the Love and Service of the People. Yet was the Ground of their Election ſo uncertain, that They might be ſaid to be ſwayed in it ſometimes more by their Will than Judgment, that it might carry with it the better Face and Air of Freedom, for They neither excluded Women nor Children further than their preſent Occaſions led Them. They rejected not even Baſtards, nor minded They Deſcent, the Rule of Their Election being wholly conformable to the *German* Way, (*viz.*) to Elect the Chiefeſt out of the Chiefeſt Family, for Worth only; yet the Honour They bore to their brave Kings, who had deſerved well of Them, made ſome reſpect their Poſterity, and chuſe their Eldeſt after their Deceaſe, and ſo in time Crowns were taken up by Cuſtom, and Election (oftentimes ſubſequent) was accounted but a Ceremony, unleſs the People would diſpute the Point. This Election was qualify'd by a Stipulation (or Covenant) wherein both Prince and People were mutually bound to each Other, the Prince to the People to be no Other than the Influence of the Law, and the People to defend their King, according to that Saying of *Æthelſtan* (the *Saxon* King;) *Seeing I by your Law allow You what is Yours, do you ſo with Me*; as as if the Law was the ſole Umpire between King and People, and to which Both muſt ſubmit. The like whereunto *Ina* (the great *Saxon* King) alſo; *No great Man*, (ſaith He) *nor any other of the whole Kingdom may aboliſh the written Laws.* Kings furthermore bound Themſelves at their Entrance into the Throne hereunto by an Oath, as it's ſaid of *Canutus* after *Æthelred*'s Death, and that the Fealty that the People ſwore to their Kings

Kings was not ſo abſolutely determined upon their Perſons, otherwiſe than in order to the Publick Good and Safety, the Laws of the *Confeſſour* (who was within 30 Years after the Reign of *Æthelſtan* beforemention'd) do plainly enough demonſtrate. To the Increaſe of Majeſty there was an Acceſs of Power not to make, diſpenſe with, nor alter Laws, but only to Execute and Act the Laws eſtabliſhed. (Thus far *Bacon.*) So that Kings (you may perceive) had but the Miniſterial (or Executive) Part, what Power elſe related to the Laws reſting intirely in the People, which (at once) ſhews the Limitations (or Reſtrictions) our Kings were under, and the extenſive Liberty of the People from the very Beginning. King *Edwin* publiſhed his Laws, *Habito cum Sapientibus & Senioribus Concilio*, with the Advice of the Wiſe Men and Elders; *Ina* (King of the Weſt *Saxons*) did the like, and the Laws of famous King *Alfred* were made after the ſame manner. Hence our Princes were and are bound to ſwear at their Coronation, that They would govern the People according to Law, and preſerve to Them all their Cuſtoms and Franchiſes; (as may be ſeen in the Statute of Proviſors, made in the 25th Year of the Reign of King *Edward* III.) And for a ſhort View of the Legal Extent of the King's Authority, and the Meaſure of Obedience due from the Subject, I preſent You with the Subject's ancient Oath of Fealty, ſubjoyn'd to the King's, than which You cannot have a clearer Evidence, and it runs thus, *viz.* (g) 'That He ſhould be Obe-'dient to all the King's Laws, and to every Precept and Pro-'ceſs proceeding from the ſame.' Thus by comparing the One with the Other, (which was my Intent in coupling them together,) You will plainly ſee, that the King has all Things ſubjected to His Authority, whilſt He acts according to Law, but nothing left to his arbitrary Will.

After that the Right of Succeſſion was receiv'd in *England*, yet it never prejudiced the Peoples fundamental Right of Chuſing their Kings, as before King *Henry* III. (till whoſe Time we can hardly find any Precedent of Succeſſion, and ſince his Reign it hath been altered ſeveral times, and the Crown

(g) Wilkinſon's *Treat. Coron.* &c. *Court-Leet*, &c. p. 140.

ſhifted

ſhifted from one Family to another by Acts of Parliament, which are ſufficient Proofs of the Power and Authority of the People) confeſſed, when one of his Counſellors of State would have inſinuated to Him, that He was not bound to preſerve the Liberties of the Nation, as being Extorted from Him, (*viz.*) (*h*) *Omnes illas Libertates juravimus, & Omnes adſtricti ſumus, ut quod juravimus Obſervemus*; All thoſe Liberties we have ſwore to, and we are All bound to Obſerve and make Good what we have ſworn. This *Engliſhmen* always held for ſuch a Truth, that when They depoſed King *Richard* II. They thought They had ſufficiently proved the Violation of his Oath, He having broken ſeveral of the Articles which by *THAT* He had promiſed his Subjects to (*i*) obſerve. By what King *James* I. told his (*k*) Parliament, we have Reaſon to believe that He alſo was pretty well convinced of this; his Words are, (*viz.*) *That a King is bound by a double Oath, Tacitly, as being King, and bound to protect his People and the Laws; and Expreſly, by his Coronation Oath; ſo as every juſt King is bound to preſerve that Paction made with his People by his Laws, framing the Government thereunto, and a King ceaſeth to be ſo, and degenerateth into a Tyrant, as ſoon as He leaves off to Govern by Law.* (Thusfar King *James* I.) Therefore as we know no King in *England*, but a King by Law, ſo we have it from *Forteſcue* (in his excellent Treatiſe before quoted) for a Certainty, that He governs not his People by a Regal and Abſolute Power, but by a Politick, *i. e.* a limited legal One. Theſe Inſtances (I hope) may be ſufficient to prove to You ſatisfactorily, that the Original of our Government is (as the Originals of all other are in the World, more or leſs) founded upon mutual Compacts (or Agreements) made between Kings and the People, and ratified by Oaths on both Sides, Breaches whereof have been fatal to Either: I could produce many more if Time would allow it, but This You are aſſured of, that upon what Bottom ſoever Kings have attained to this Crown, They never thought their Titles good,

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(*h*) *Recorded by* Matt. Paris, *under the Year* 1223. pag. 219.

(*i*) *As may be ſeen in the Acts of his Depoſal, recorded in* Knighton's *Chronicle.*

(*k*) *Of* 1609, *the* 21*ſt of* March.

ſafe, or well eſtabliſhed, till They had gained the free and general Conſent of the People.

As to the Government of the State, if We look back as far as the *Saxon* Times, our Hiſtories inform Us, that Parliaments met, and were made Annual by King *Alfred*, that the King was obliged to aſſiſt at them in caſe He was not Sick, and that nothing but his Sickneſs could diſpenſe with his Attendance. That *Engliſhmen* never believed that the King of *England* could violate the Laws, and overturn the State at his Pleaſure without making Himſelf thereby liable to Puniſhment; the Laws of the *Confeſſor*, and the manner of holding Parliaments, confirmed even by *William* (the pretended) Conqueror (*l*), do clearly manifeſt. Indeed our ancient Lawyers, State Miniſters, and Kings (who ſhould beſt underſtand the Form and Conſtitution of this Kingdom) were ſo far from believing that the Royalty thereof was Abſolute and Unlimited, that They have expreſly declared it to be the contrary, (*viz.*) a Mixed Limited Government; Mixed, as being compoſed of Monarchy, Ariſtocracy, and Democracy, (or to be more plain with You, of King, Lords, and Commons;) Limited, as being bounded by fundamental and eſſential Laws, made by the Conſent of the People, *i. e.* by the three Eſtates of the Realm, which together are the true Repreſentatives of the People.

This then is (moſt certainly) the Original Conſtitution of this Kingdom, derived to Us from our *Saxon* Anceſtors, who (to avoid the Inconveniencies ariſing from Each of them) wiſely compoſed it out of the three ſimple Species juſt now mentioned, (which are the only diſtinct Forms that have hitherto been known in the World, and of which all the other great and notable Governments in *Europe* are framed) and from the reſpective Proportions of Prerogative, Power, and Liberty, lodged in theſe three Eſtates, United together, it may be juſtly ſaid to be the Nobleſt and beſt Modelled Government under the Sun. And as this Balance of Power is what (no doubt)

(*l*) *And printed by the Care of* Dom. Luc. D'achery, *in the* 12*th Tome of his Spicilege.*

our

our Anceſtors had a particular Regard to in the framing of our excellent Conſtitution, (for the King has his, the Parliament, and People theirs,) ſo it is in the Preſervation of this juſt Balance that the Happineſs of this Nation can long and principally ſubſiſt. No One or Two of theſe Powers joyning together (they are all ſo equally blended and conſtituted for the mutual Intercourſe and Support of Each Other) can make a Law without the Concurrence of the Third; ſo that whilſt they act Harmoniouſly together in their ſeveral reſpective Stations, we need not fear the Bleſſings that naturally flow from ſuch an Union: whereas when any one preſumes to incroach upon the other, it is hardly poſſible they ſhould long continue without the utter Ruin of the whole Body-Politick. But tho' the King has only his Share of the Legiſlative Power, (by which He can neither raiſe Money, nor make, change, or annul Laws without the Conſent of the two other Eſtates,) yet the chief Executive Part of Adminiſtration lies ſingly and ſolely in Him; and it is upon this account that our Government is called a Monarchy, this Species ſeeming to be Uppermoſt, and to Preſide at the Helm. I muſt own alſo, that it was always Hereditary, (where the Right of Succeſſion or the publick Good did not interfere, *i. e.* where there was not a Natural or a Moral Incapacity) and it is now Hereditary in a Family, which I hope will afford Us Kings (*m*) till Time ſhall be no more. In ſhort, a Government raiſed upon ſuch a Baſis as Ours is, which hath ſtood the Shock of ſo many Ages from its Original, and particularly of the Laſt, is not eaſily to be Changed, much leſs Subverted, it muſt be ſomething more than Human that can do it; whereas thoſe which have their Riſe from Injuſtice, Conqueſt, or Uſurpation, have but a ſandy Foundation, and muſt inevitably give way to the attempts of any Superiour Power. If We regard this Conſtitution alſo in the Church as well as in the State, We ſhall find it governed (after an admirable Oeconomy and Order) by Biſhops, Men Eminent for their Learning and Piety; and were the Purity of its Doctrine, and the Moderation of its Diſcipline more impartially and calmly conſidered, or more generally underſtood, I

(*m*) *And Queens.*

am apt to think it would be more readily embraced and admired than it really is.

Now, as One of the Principal Ends of Government is the obtaining ſpeedy and impartial Juſtice, (which includes every thing that is neceſſary for the Good and Preſervation of the Commonwealth,) and no ſort whatever can ſubſiſt long without it, (Kingdoms without Juſtice being, as *Auſtin* calls them in his *De Civitate* (*n*) *Dei*, no better than great Robberies,) it is abſolutely neceſſary for the Accompliſhment thereof, that certain known and ſtated Rules ſhould be eſtabliſhed to be the Standard of Right and Wrong, paſſing under the Denomination of Laws, which (having their foundation from Reaſon, Equity, and the general Conſent of the People) might be of force to bind every Individual to the Obſervation of them. For the Support therefore and Maintenance of this Well-eſtabliſh'd Government, We have not only Laws, but ſuch as are exactly ſuited to and calculated for its Conſtitution, (which is a legal and limited Monarchy,) being Equally and Naturally alſo the Security of Men's Lives, Eſtates, and Liberties, in which the Good of the Publick conſiſts. Every Law has in itſelf a natural Tendency to the Protection and Preſervation of that Being, Society, (or Community,) which is to be directed and governed by it; Ours anſwer this End in the ſtricteſt Senſe, and, of all the Laws extant upon Earth, may be ſaid to come neareſt to the Law of Nature and the Divine Law; a Body of Laws ſo full and copious, ſo wiſe, and indulgent to the Subject, and withal ſo careful of the Prerogative of the Prince, that no Nation under the Heaven can parallel it.

Yet (*o*) as admirable as our Laws are, ſome out of Ignorance, as alſo out of a Spirit of Envy and Malice, being Enemies to our Conſtitution, have gone about to detract from their

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(*n*) Lib. 4. *Theſe are his very Words*, (viz.) Remotâ enim Juſtitiâ, quid ſunt Regna, niſi magna Latrocinia?

(*o*) *The following Hiſtorical Account of our Laws is an Abſtract only (and a very faithful and exact one too) of this preſent Judge* Forteſcue's *learned Preface to* Forteſcue's *Treatiſe of Abſolute and Limited Monarchy, which I thought I was in Juſtice and Honour bound to acknowledge.*

Merit,

Merit, by charging them with Uncertainty, and with an Original of no older Date, than the Time of *William* the (pretended) Conqueror, which Cenſure (if rightly conſidered) is but vain, frivolous, and ill-grounded: for as to the firſt, Law in general, with regard to the Nature and Subject Matter of it, is allow'd to be as capable of Certainty, yea, the beſt Certainty, even Demonſtration itſelf, as any Science or Profeſſion whatſoever, Mathematicks only excepted; and for our particular Laws, I think the Care that is taken for the Diſcovery of the Truth in Matters of Fact, is Evident and Demonſtrative enough, a Jury of Twelve Upright and Subſtantial Men (ſuch as I take You, Gentlemen, to be) being by the Law to be ſummoned from thoſe Parts where the Fact is ſuppoſed to be done, who, according to the Evidence given Them, and the Direction of a Learned Judge in Point of Law, do, after due, ſerious and weighty Deliberation, determine thereupon, and bring in their Verdict accordingly; and that the Evidence may be the Clearer, and better to be depended upon, written Depoſitions are not admitted but upon mere Neceſſity, the Witneſſes being to appear Perſonally, and to be examined by Judge and Council *vivâ Voce*, a Method of coming at the Truth peculiar to this Nation, no Other in the whole World having and practiſing the Like. Then as to the Original of our Laws, *Forteſcue* in his Book, *De Laudibus Legum Angliæ*, ſays, that neither the *Roman* nor *Venetian* Laws, which are accounted very Ancient, can come up near to Ours for Antiquity, which are ſtill (He further ſays) the ſame in Subſtance as they were at the very firſt.

For our Common Laws, They had their Riſe with the firſt civilized State in the Land, and for that part of our Law (which is no inconſiderable One) founded upon the Law of Nature, (which muſt be Primary to every Nation, unleſs it makes uſe of foreign Laws) it is as Ancient as any; and as to the other part of our Law, conſiſting of Poſitive Inſtitutions for the Well-Government of the People, and of our Cuſtoms and Uſages, (all which are but ſecondary to thoſe of the Law of Nature,) no doubt but We have ſome that We are indebted even to the *Romans* and *Britons* for, ſince it's certain we were not wholly without Laws when firſt a Nation, tho' they

they were but few; and our Hiſtories inform Us, that the *Romans* made no ſenſible alteration in the Laws, Language, or Policy of the *Britons*. The *Saxons* indeed turned every thing topſy-turvy, introducing a Language intirely New, and a number of Laws, relating both to Church and State, almoſt infinite.

THE firſt *Saxon* Laws were made by King *Æthelbert*, (the firſt Chriſtian King, and (according to the *Romans*) with the Advice of his Wiſe Men, and were commanded by Him to be Written and Publiſhed in *Engliſh*, the Chief whereof are ſtill Extant. And every *Saxon* King ſucceſſively confirmed moſt part of his Predeceſſor's Laws, tho' by the Advice of his Parliament He made ſome new Ones, as it is the Cuſtom now-a-days.

KING *Alfred*, who is called the Great Founder of the *Engliſh* Laws, was in Truth (tho' the firſt ſole Monarch after the Heptarchy) but the Collector of the Subſtance of the Laws of all the former *Saxon* Kings from King *Æthelbert* to his own time (who ruled only parts of the Land) into one Body, and ſo out of it compos'd one intire Book of Laws, which have ever ſince been called *Jus Commune*, *Jus Publicum*, or the Common-Law of *England*.

THIS was ſoon after called in *Saxon*, the *Folc-right*, (or People's Right,) and confirmed by all the ſucceeding *Saxon* Kings.

NOR is it unlikely that this Law-Collection of King *Alfred* might be the ſame with the Dom-bec, or Dome-book, referred to by all the ſubſequent Laws of the *Saxon* Kings, and was their Law or Statute-Book which They determined Cauſes by, ſince before King *Alfred*'s Reign, neither Folc-right nor Dome-book is mentioned.

BUT in the next Reign, King *Edward* the Elder's, the Judges were commanded to give right or juſt Judgments according to the Dome-book, and without fear to declare and adminiſter the Folc-right to all his Loving Subjects.

ÆTHEL-

ÆTHELSTAN (his immediate Succeſſor) confirms the Folc-right, referring to the Dome-Book as the former King did.

KING *Edgar* alſo, after a Confirmation of the Old ones, propoſes new Laws, and then commands, that every Man (both Rich and Poor,) ſhould be thought worthy of his Folc-right, *i. e.* enjoy his Birth-right, the Common-Law of *England*, and that his Judges ſhould be Ruled by the Dome-book or Law then Eſtabliſhed.

THE Laws of *Canutus* (or *Knute*) are as Expreſſive of the ſame, as thoſe of former Laws.

HAROLD the Firſt and *Hardicanute*, Uſurpers, and of the *Daniſh* Race, (whoſe Reigns put together exceeded not ſeven Years) did not much mind theſe Laws:

BUT *Edward* (the Confeſſor) a *Saxon*, being a Collector alſo of thoſe Laws that were Extant in his Time, as King *Alfred* was of thoſe in his before Him, and then ordering thoſe to be obſerved that lay dead in the Reigns of *Harold* and *Hardicanute*, He may properly enough be ſtiled, the Reviver and Reſtorer of the *Engliſh* Laws. Thus our Common-Law muſt be derived from King *Alfred*, (as being indeed framed and eſtabliſhed by Him, and called then the Folc-right, *i. e. Jus Publicum* or *Commune*, which, upon the alteration of the Language, was called the Common-Law of *England*) and not from *Edward* the Confeſſor. And this Law, tho' it has gone through divers alterations, remains ſtill in Subſtance the ſame.

TO proceed to the *Norman* Times. King *William* (the Firſt) when he publiſhed thoſe Laws, expreſly mentioned them to be *Edward* the Confeſſor's, and as ſuch, confirmed and proclaimed them to be the Laws of *England*, to be kept and obſerved under ſevere Penalties, which Confirmation was upon Oath. Theſe Laws of *Edward*, the Confeſſor, contain'd the whole Body of *Saxon* Laws, which were made many hundred

hundred Years before Him, and not only thoſe framed and enacted in his Time.

KING *Henry* (the Firſt) promiſeth to Obſerve the ſame Laws of good King *Edward*, yet afterwards impoſed others, which were but of a ſhort Continuance.

AFTERWARDS King *Stephen*, *Henry* the Second, and *Richard* the Firſt, confirm the ſame Laws of King *Edward*:

AND King *John* (after much ſtruggle with his Barons) ſwears to reſtore the good Laws of his Anceſtors, and eſpecially King *Edward*'s Laws, and confirms theſe by way of Schedule (or Charter) the ſame in Subſtance with *Magna Charta*, confirmed afterwards by *Henry* the Third.

AND to make the ſame more effectual, King *Edward* (the Firſt) commanded, by an Act of Parliament, (made in the twenty (*p*) fifth Year of his Reign) this great Charter (called ſo not for its Bulk, but for its Importance and Conſequence to the *Engliſh* Nation) to be allowed by the Juſtices in their Judgments and Reſolutions as the Common-Law.

THE Laws of *Edward* (the Confeſſor) are mentioned to be obſerved in the antient Coronation-Oath of the Kings of *England*; ſo that hence it appears, that *Magna Charta* itſelf was but a Confirmation or Reſtitution of the Common Law of *England*, which is really an Extract of the very beſt of the *Saxon* Laws.

TO go higher yet with our Laws in Antiquity; many Things are to be found in the Laws of *Henry* the Firſt, taken in Subſtance from the (*q*) Salic-Laws, and ſome Laws *verbatim* with the Salic, and ſome other from the *Ripuarian* (*r*).

(*p*) Cap. 1.

(*q*) *The moſt antient ſome ſay of any now in Being. They were made by the* Franks, *who were of* Germany, *and called ſo from the River* Sala *in* Germany, *near which they were made.* (*Forteſcue*'s Preface.)

(*r*) *The* Ripuarians *were much the ſame with the* Franks. *Du Freſne*'s Gloſſary.

IT was from the (s) *Lombards* that we call our Cuſtoms and Uſages that have been time out of mind the *Lex non ſcripta*, the unwritten Law, they being wont to practiſe ſeveral of their Laws before they were written. Of this Body of our *Engliſh* Laws, the Government, and what is now call'd the Conſtitution, makes the principal Part; from which proceed all our other Municipal Laws, relating to Religion, Life, Liberty, or Property. After an Uſe and Practice of our Laws, time out of mind, then they are taken to be the Common Law of *England*, and not before; nothing but Time immemorial making any thing Part of our Conſtitution.

THUS having vindicated our incomparable Laws from the malicious Aſperſion of Uncertainty and Novelty, thrown upon them by the Enemies of our Conſtitution, and led you through the whole Hiſtory of them; I ſhall only add, that what crowns all is, that theſe Laws are made by our own Conſent, it being the inherent Birth-right of *Engliſhmen*, as Freemen, not to be obliged to ſubmit their Lives and Properties to any Regulations or Laws, which either the whole Collective Body, of which They are Members, or the Repreſentatives they have delegated, have not unanimouſly, or by a Majority, conſented to; and as ſuch they are the very Life, Blood, and Cement of this well-regulated Government, and carry with them an indiſpenſible Force and Obligation upon every ſingle Member thereof to live in Obedience and Conformity to them, as being their own proper Act and Deed. What remains, is only a ſhort Admonition to a due and vigorous Execution of theſe Laws, without which (tho' they be ever ſo good and excellent in themſelves, and ever ſo well ſuited or adapted to all Purpoſes and Capacities, and Ours is the moſt comprehenſive Body of Laws of any in the Univerſe) they will be but as dead Letters (or Cyphers) and ſignify nothing, being rendered incapable, without Execution, of anſwering the Ends for which they were made, and altogether unſerviceable. Every Law conſiſts of two Parts, the one (called) Declarative or Defini-

(s) *They were a Colony of the* German-Saxons, *who at laſt ſettled in* Italy, *and now make Laws according to the* Saxon *Inſtitutions.* (Forteſcue's *Preface.*)

tive, (which ſets forth what is to be performed or omitted) the other Vindicative, (wherein is ſignified what Penalty ſhall be incurr'd for Trangreſſing in either Reſpect;) and this latter Part is uſually termed the Sanction of a Law. Theſe then are the Eſſential Parts, without which a Law would be void of its natural Strength and Force; for as it would be abſurd to ſay, You ſhall undergo ſuch a Penalty, unleſs it hath been before ſignified by what Means You ſhall render yourſelf obnoxious to it; ſo it would be loſt Labour to ſay, Do This, if nothing follows beſides. But in order to acquaint every Man with his Duty, and with what each ought to contribute to the Publick, theſe Laws are firſt Promulgated or Publiſhed, (which gives them the ultimate Force they can naturally have;) and then if after ſuch Promulgation or Publication, any Man (taking no notice of them) fails in his Duty, and receives the Puniſhment his Tranſgreſſing of them may deſerve, he is left without Excuſe, ſince no Man can reaſonably complain of his incurring and undergoing the Penalty of a Law, which He Himſelf hath given his Conſent to be eſtabliſhed, as juſt and neceſſary. And for this Reaſon it is, that tho' the Execution of Juſtice may ſeem ſometimes too ſevere, yet it is always excuſable; for Magiſtrates by the Impulſe of Paſſion or Prejudice, may pervert their own Power, and the Authority of the Laws to do Juſtice; but the Law itſelf (which *Plato* calls *Mens ſine Affectu*,) is always inflexible and inexorable. To conclude this Introduction; ſince Laws are of no Force, of no Validity, nor Importance, without Proper Perſons to put them in Execution; ſince bare Statutes have neither Ears to hear our Cauſe, nor Feet nor Hands to haſten to Us to defend Us, but all the Aſſiſtance that Juſtice gives us is convey'd by its Miniſters; I muſt urge You (Gentlemen) You, who are the *Primum Mobile*, and ſet all the other Springs a going, to an active, vigorous, and diligent Diſcharge of your Duty in this Particular, that ſuch excellent Laws as Ours may not loſe their proper and intended Courſe and Influence, to the diſcouraging and leſſening the Number of Offenders, (who through the Negligence or Remiſſneſs of the Officers of Juſtice do daily grow more hardy and numerous) the Execution whereof is the principal End of our meeting here this Day.

I come now to the Particulars of your Enquiry, reducible to theſe Heads, (*viz.*)

GOD and his CHURCH,
The KING and his PEOPLE.

To begin at the right End; what relates to God and Goodneſs muſt ſtand in the Front, which is not only what ought to be of Itſelf, but what our Good and Great King hath commanded us by his Royal Proclamation (which was juſt now read to Us) to do, as the Baſis and Ground of our Actions and Proceedings here: And, indeed, unleſs we be good Chriſtians, it is impoſſible to be Loyal and Good Subjects, Religion being the beſt Support and Prop of a State. Now, what more immediately concern the Honour of God, are theſe two Vices, (*viz.*) Cuſtomary Swearing, and Drunkenneſs. I much queſtion whether the Firſt was ever more riſe in this Nation than it is now-a-days, that Great and Tremendous Name being as familiarly uſed as the meaneſt Thing. To ſwear even in a Paſſion, or under the higheſt Provocation, is by no means juſtifiable; but to fill our Mouths with Oaths, when Cool, in Temper, and in our common Diſcourſe, is horribly Shocking and Dreadful; and ſo far is it from carrying with it the leaſt Air of Gracefulneſs and Handſomeneſs, that it is ſtrangely ridiculous. How this is to be better remedied, I am wholly at a loſs; for ſince the Growth of it to what it is could not be prevented, it will be ſo much the harder Task to ſuppreſs it at this Height; and if in any caſe the number of Offenders may be ſaid to be too big for the Law, it is certainly ſo in This The (*t*) Law (I muſt confeſs) has provided very well againſt theſe Offenders already, and if it was duly executed, my Opinion is, it would greatly leſſen their Number; and what induces me the rather to think ſo, is, that when a common Swearer appears before a Perſon of Authority or Quality, ſcarcely an Oath ſlips from him, tho' he ſpeaks ever ſo much.

(*t*) 21 Jac. cap. 20. 6 & 7 W. 3. cap. 11.

Magiſtrates therefore ought to inform themſelves more ſtrictly of ſuch Offenders, that they may be puniſhed according to Law. Preſent then (I ſtrictly charge you) Common-Swearers, and all Conſtables negligent or remiſs in this Part of their Duty.

DRUNKENNESS is the ſecond Vice, which calls aloud alſo for your Redreſs; it is ſo Univerſal now (People of all Ages, Sexes, and Conditions being infected with it,) that it is become even a National Reproach. This Beaſtly Cuſtom (for ſo it deſerves to be called) had evidently its Riſe from the Time our Government began to decline, which was ſoon after Good Queen *Elizabeth*'s Death, ſince the firſt Statutes (now in Force) againſt this Vice, were made but in the Reign of King (*u*) *James* the Firſt, till which, it is more than probable, that this Vice was not grown up, at leaſt to any conſiderable ſize. It is very ſtrange and unaccountable, that Men cannot be ſociable and merry with one another, without making their Converſation a Sin, and Themſelves Beaſts. Some are ſo lamentably beſotted to Liquor, that they had rather go in Rags than be kept from the Spiggot: And many a Man, who liv'd well before he fell into a ſottiſh Courſe, hath been brought to a Morſel of Bread. It is not from any Deficiency in the Law that this Vice has got to ſuch a Height, (a ſufficient Puniſhment being ordered for theſe Offenders) but the Negligence or Remiſſneſs of proper Officers that gave it its Growth; nor can any other Reaſon be aſſign'd why more Drunkards are not puniſhed than there are, but the Commonneſs of this Vice, and the Univerſality of its Infection, which make People look upon it as no Offence; a Man being loth to have another puniſhed for that Fault whereof he is deeply guilty himſelf. There ought to be a Reformation upon a double account, upon a Religious One, becauſe the Honour of God ſuffers ſo extremely by it; and upon a Political One, becauſe not only whole Families are reduced to Poverty and Ruin, but Men Themſelves are render'd wholly unſerviceable to the Publick by it. One

(*u*) 4 Jac. cap. 5. 21 Jac. cap. 7.

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great Step towards it would be to curtail the Number of Ale-houſes, (which are grievouſly degenerated from their original Inſtitution) and to be pretty ſharp and ſevere with the Keepers of them, who make nothing of breaking the Recognizances by which they are bound at their Licenſing (*w*) to keep good Order and Rule in their Houſes, and not to ſuffer (*x*) Tippling therein, which notwithſtanding They do, even on Sundays, and in time of Divine Service too, moſt ſhamefully and ſcandalouſly. To go to the Root therefore of this Evil, I would have you Preſent not only thoſe who reſort to and frequent Ale-houſes, and ſit Tippling there till They be Drunk, but the Ale-houſe-keepers Themſelves who ſuffer ſuch Doings in their Houſes, and all Conſtables who are Careleſs in this particular Part of their Office: and to Suppreſs this and the Former Vice more Effectually, Informers ought to be encouraged, that theſe Offenders may more eaſily be apprehended and brought to Juſtice. Theſe two Articles I more eſpecially recommend to your Inquiry, becauſe they do ſo immediately concern the Honour of God, and the Peace and Happineſs of the Publick, and I make no doubt (Gentlemen) but you will regard them as ſuch.

As to the Church.

Preſent Thoſe who abſent Themſelves from (*y*) Church, or any Proteſtant (*z*) Aſſembly of Divine Worſhip, (tolerated by Law,) on Sundays and Holy-days.

Thoſe who receive not the (*a*) Sacrament once a Year.

And Thoſe who (*b*) Deprave it by Word of Mouth, or otherwiſe.

(*w*) *According to* 5 & 6 Ed. 6. cap. 25.
(*x*) 1 Jac. cap. 9.
(*y*) 1 Eliz. cap. 2. 23 Eliz. cap. 1. 3 Jac. cap. 4. *and ſome other Statutes.*
(*z*) 1 W. & M. cap. 18.
(*a*) 3 Jac. cap. 4.
(*b*) 1 Ed. 6. cap. 1.

SABBATH-Breakers (*c*) in any Reſpect, either for Pleaſure or Profit; but Works of Piety, Charity, and Neceſſity, are excepted on that Day.

THOSE who are guilty of Gaming, and other lewd and diſorderly Practices.

DISTURBERS of (*d*) Preachers in their Sermons (or Collations.)

FIGHTERS (*e*) (or Strikers) in Churches (or Church-yards.)

KEEPERS of Fairs (*f*) (or Markets) in Church-yards.

THE Offences that come next, are thoſe that relate to the King and his People.

To the KING.

YOU muſt inquire of all Treaſons, which are of two ſorts, *viz.*

High and Petit TREASON.

OF High-Treaſon there are ſeveral Sorts (or Species) both at Common and by Statute-Law, but thoſe only that are made ſo by ſome Statutes fall under your Inquiry.

TO Compaſs or Imagine, *i. e.* to Contrive, Deſign, or Intend the Death of the King, declaring the ſame by ſome Overt (or Plain) Act (or Deed,) manifeſtly prov'd, is Treaſon by the twenty-fifth of King *Edward* III. which was the firſt Statute declaratory of Treaſons, and made to relieve the Subjects, who

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(*c*) 29 Car. 2. cap. 7. *and under this Head are included all thoſe Laws made for the Obſervation of the Lord's-Day.*

(*d*) 1 M. 1 Seſſ. 2. cap. 3. 1 W. & M. cap. 18.

(*e*) 5 & 6 Ed. 6. cap. 4.

(*f*) 13 Ed. 1. *Stat.* Wint. cap. 6.

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before uſed to be taxed with Treaſons upon almoſt every account, whereby many innocent Perſons loſt their Lives, contrary to all Reaſon and Juſtice.

To Levy War againſt the King is Treaſon, but the War muſt be actually Levied (as Lord *Coke* expreſly tells Us) to make it ſo; (yet the Meeting and Conſulting to do it, tho' it be not actually Levied, is a ſufficient Overt-Act to prove the Compaſſing and Imagining the Death of the King.)

And to adhere to his Enemies within the Realm or without,

Or to Comfort Them here or elſewhere, is Treaſon alſo by this Statute.

To kill the Chancellor, Treaſurer, Juſtices of either Bench, in Eyre, of Aſſiſes, or of Oyer and Terminer, ſitting in their Places and doing their Offices, is Treaſon by this Statute. (They are publick Servants in Eminent Stations, and therefore deſerve the publick Protection.) This Statute extends but to the Perſons therein named, and not to the Lord Steward, Conſtable, or Marſhal, or Lords of Parliament, and only to thoſe whilſt They are in the ſaid Offices, and not afterwards, nor when They are wounded, unleſs They die of thoſe Wounds. By a Statute made in the third Year of the Reign of King *Henry* VII. Compaſſing to Kill a Privy-Counſellor is Felony, but by a late Statute, made in the ninth (*g*) Year of the Reign of Queen *Anne*, Unlawfully attempting to Kill, or unlawfully aſſaulting and ſtriking, or wounding a Privy-Counſellor, when in the Execution of his Office, is Felony without Benefit of Clergy.

To Counterfeit actually the Great or Privy-Seal, (for only Compaſſing to do it is not ſufficient,) or Money and Foreign Coin made Current here, are Treaſons alſo by the ſame Statute of the Twenty-fifth of King *Edward* III.

(*g*) Cap. 16.

THUS Treaſons were ſettled then by that Statute, (an Act ſo beneficial to the Publick, that the Parliament, wherein it paſſed, was called long after, *Parliamentum Benedictum*, the Bleſſed Parliament;) ſince which there have been no Laws (but Temporary Ones, and ſome made againſt Counterfeiting, Diminiſhing, and Defacing the Coin) Expreſſive or Definitive of Treaſons, till Queen *Elizabeth*'s time.

QUEEN *Mary* the Firſt would have nothing Treaſon, but what was ſo by the former Statute.

BUT to ſtrengthen the Reformation, the third Offence in promoting a Foreign Power, was made Treaſon by the firſt of Queen *Elizabeth* (*h*).

BY the fifth (*i*) of her Reign, to maintain the Authority of the See of *Rome*, or to refuſe the Oath of Supremacy, both equally Treaſon.

BY the (*k*) thirteenth of the ſame, to bring into the Realm, and execute the Pope's Bulls, Treaſon.

TO abſolve the Subjects from their Allegiance, or to reconcile them to the Obedience of the Church of *Rome*, Treaſon, both in the Reconciler and Reconciled, by the (*l*) twenty-third of Queen *Elizabeth*, and third (*m*) of King *James* the Firſt.

PRIESTS and Jeſuits coming into, and abiding in the Realm, and not returning after ſix Months Proclamation, and refuſing to take the Oaths, Treaſon, by the (*n*) twenty-ſeventh of Queen *Elizabeth*.

TO hold Correſpondence with the Pretender is Treaſon, by the (*o*) thirteenth and fourteenth of King *William* the Third.

(*h*) Cap. 1. (*i*) Cap. 1. (*k*) Cap. 2. (*l*) Cap. 1.
(*m*) Cap. 4. (*n*) Cap. 2. (*o*) Cap. 3.

BY

By the (*p*) firſt of Queen *Anne*, to endeavour to hinder the next Succeſſor in the Proteſtant Line after her Death, is Treaſon: As alſo,

By the (*q*) ſixth of the ſaid Queen, to maintain by Writing and Printing, that his preſent Majeſty is not Lawful and Rightful King of theſe Realms, or that the Pretender hath any Right to this Crown, is Treaſon.

(Popery, Gentlemen, let me obſerve to You, is ſtill the ſame that ever it was; a ſad Inſtance whereof we have lately had in the Affair of *Thorn* in *Poland*; ſo that we cannot be too well guarded againſt it: And as our King has nothing more at Heart than the Caſe of Proteſtantiſm in general, no doubt but He is working out ſome Good or other for the Poor Proteſtants there, as alſo for the Preſervation of the Peace and Tranquillity of all *Europe*.)

Nor ought Miſpriſions of Treaſons to eſcape your Inquiry, the Offenders being thoſe who conceal any ſort of Treaſon, or harbour the Traytors, knowing them to be ſuch; but it muſt be a bare Knowledge only, elſe it will amount to Treaſon itſelf.

There are no Acceſſaries in Treaſon, All are Principals.

Petit-Treason is of an inferior Degree, and is, when a Wife kills her Husband, a Servant his Maſter, *&c.* to whom by the Law they owe Obedience.

The Offences that relate to the People, are thoſe that are committed againſt their Lives, or thoſe that violate their Perſons without taking away their Lives, or thoſe that hurt them in their Properties, *i. e.* their Goods or Poſſeſſions, as are all Felonies, whether at Common or by Statute-Law: I ſhall

(*p*) Cap. 17. (*q*) Cap. 7.

mention ſome of the chief of them to You; to enumerate them all, would be tedious.

THOSE that are committed againſt their Lives, are Murders; which are of three Sorts, (or Species,) *viz.*

Wilful,
Accidental,
And
Se defendendo, or in One's own Defence.

MURDER of the firſt Sort (or Species) is, to kill a Man with Malice prepenſed, expreſſed or implied.

TO (*r*) Stab, or Piſtol another, the Party ſlain having neither drawn a Weapon, nor given a Blow.

TO (*s*) Poiſon another; this is the moſt Secret and Treacherous Way of Murdering, againſt which there is no manner of Guard: It was formerly ſo Horrid and Abominable in the Eye of the Law, that the Offender had Judgment to be (*t*) boiled to Death, but now it is altered, and made Felony (*u*).

WITCHCRAFT (*w*) alſo is comprehended under this Head; but this is extremely hard to prove. (Theſe Offences are Death by the Law.) Witches or Wizards were to be burned by the ancient Common-Law.

TO kill another accidentally, (which is Murder of the ſecond Sort, or Species,) doing a Lawful Act, is Chance-medley only.

(*r*) 1 Jac. cap. 8. (*s*) 1 Ed. 6. cap. 12. Sect. 13.
(*t*) *It was made High Treaſon by* 22 H. 8. (*u*) *By* 1 Ed. 6. 1 M. c. 1.
(*w*) 1 Jac. cap. 12.

Se Defendendo, (which is Murder of the third Sort, or Species;) this is when a Man is assaulted by another, and in his own Defence He happens to kill Him.

Manslaughter is when Two quarrel and fight instantly before they grow cool again, and One of them is slain. (All these the Law pardons of course.)

Offences that violate their Persons without taking away their Lives, are (*viz.*)

To Lie in Wait to cut (*x*) out or disable a Tongue, put out an Eye, slit a Nose, cut off a Nose or a Lip, or cut off or disable any Limb or Member, with an Intent to Maim or Disfigure another.

To (*y*) Ravish a Woman, *i. e.* to know her Carnally against her Will, and tho' she consents afterwards;

And so to Lie with a Child under (*z*) ten Years old, tho' with her Consent.

Buggery (*a*) with a Man or Beast; a Sin that could never have been thought of, till Men were fallen into the lowest degree of Depravity. It is a Sin against God, Nature, and the Law, for which the Offenders were in ancient Times to be burned by the Common Law. (These are all Felonies by Statutes, from which the Benefit of the Clergy is taken away.)

Offences that hurt them in their Properties, *i. e.* their Goods or Possessions, are, *viz.*

To Rob on the (*b*) High-way.

(*x*) 22 & 23 Car. 2. cap. 1.
(*y*) 3 Ed. 1. cap. 13. 13 Ed. 1. cap. 34. 6 R. 2. cap. 6.
(*z*) 18 Eliz. cap. 7.
(*a*) 25 H. 8. cap. 6. 32 H. 8. cap. 3. 2 & 3 Ed. 6. cap. 29. *Repealed by* 1 M. 1. *Revived and made perpetual by* 5 Eliz. cap. 17.
(*b*) 4 & 5 W. & M. cap. 8. *and many others.*

To take away any thing from the Perſon of another Privately, of the Value of twelve Pence or more, which is called Picking of (*c*) Pockets and Cutting of Purſes.

To Steal (*d*) Horſes (or other Cattel) abroad or elſewhere.

To Rob a (*e*) Church, Sacrilege.

To Rob an (*f*) Houſe by Night or by Day. (Theſe are all Felonies by Statutes, wherein the Benefit of Clergy is not allowed.)

Wilfully to Burn or cauſe to be Burned in the Night-Time, any Rick or Stack of Hay, Corn, or Grain, Barns, Outhouſes, or Buildings or Kilns, or deſtroy or kill Horſes, Sheep, or other Cattel, Death by the Law, or Tranſportation, at the Election of the Party Convicted, by 22 & 23 *Car.* 2. *cap.* 7.

If the aforeſaid Burnings be accidental, then they are but Treſpaſſes.

You muſt Inquire of the Acceſſaries to all Theſe, for generally where the Benefit of Clergy is taken away from the Principals, the Acceſſaries both before and after the Fact are likewiſe to ſuffer Death.

Petit-Larceny is the Taking away any Thing under Twelve-pence value, which tho' but a ſmall Offence, yet being frequently committed, requires your Care to ſuppreſs it.

(*c*) 8 Eliz. cap. 4.
(*d*) 37 H. 8. cap. 8. 1 Ed. 6. cap. 12. 2 & 3 Ed. 6. cap. 33, &c.
(*e*) 1 Ed. 6. cap. 12, &c.
(*f*) 18 Eliz. cap. 6. 39 Eliz. cap. 15. 3 & 4 W. & M. cap. 9. 4 & 5 W. & M. cap. 24. *Made perpetual by* 6 & 7 W. 3. cap. 14. 10 & 11 W. 3. cap. 23. 5 An. cap. 31. 12 An. &c.

Be-

BESIDES all manner of Felonies, which by Virtue of our Commiſſion are inquirable by You, You have it in your Power to Inquire of (*g*) Foreſtallers, Regrators, and Ingroſſers, (*h*) Extortions, falſe (*i*) Weights and Meaſures, the great Neglects of all thoſe Officers in doing their Duties who more immediately belong to this Court; Nuſances whether by (*k*) Inns, Alehouſes, or on the Highways (*l*) and Bridges, Deſtroyers of the (*m*) Game, who by ſo doing ſpend their time looſely and idly; (*n*) Cottages and Inmates, all Treſpaſſes *vi & armis*, Riots, (*o*) Routs, and unlawful Aſſemblies, Affrays, Batteries, Forcible (*p*) Entries and Detainers, all Breaches of the Peace whatſoever, and in ſhort, all kinds of Miſdemeanours, whereof a Principal one is, an heedleſs Contempt of the Subordinate Magiſtrate's Authority.

WERE People but to conſider, that Magiſtrates are the King's Vicegerents, that They Perſonate Him, and derive their Power from Him, as alſo what Good They do Them by an impartial and juſt Execution of their Office, They would pay Them the Obedience and Reverence due to Them, and not uſe them diſreſpectfully in any kind whatever, Obedience (*q*) being the very Eſſence of the Law. We Juſtices of the Peace are very ancient and honourable Officers, we act under the King, and by his Commiſſion, and by virtue thereof, are to

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(*g*) 5 & 6 Ed. 6. cap. 14. 13 Eliz. cap. 25.

(*h*) 22 & 23 Car. 2. cap. 23, &c.

(*i*) 11 H. 7. cap. 4. 22 Car. 2. cap. 8. *and a great many others.*

(*k*) *As Sinks, Carrion,* &c. *that may infect the Air.*

(*l*) *Not being ſufficiently repaired.*

(*m*) 4 & 5 W. & M. cap. 23. 5 An. cap. 14, &c.

(*n*) 31 Eliz. cap. 7. 35 Eliz. cap. 6.

(*o*) 27 R. 2. cap. 8. 13 H. 4. cap. 7. 2 H. 5. cap. 8. 8 H. 6. cap. 14. 19. H. 7. cap. 13. *and a late Statute made in this King's Reign.*

(*p*) 5 R. 2. cap. 7. 15 R. 2. cap. 2. 8 H. 6. cap. 9. 31 Eliz. cap. 11. 1 Jac. c. 15.

(*q*) Obedientia eſt enim ipſa Legis Eſſentia, *ſays* Dalton.

keep

keep Peace and Quietneſs amongſt his Subjects; ſo that to affront and abuſe Us, is no leſs than to inſult the Government and the Laws. From a due Conſideration therefore of the Derivation of our Authority, and of the Service and Benefit We do the People thereby, We ought to be reſpectfully uſed both in and out of Seſſions, whether Executing our Office or not, Preſent or Abſent, and not to have Words of Contempt, or *contra bonos mores*, thrown at Us.

To explain myſelf to You, *viz.*

Those who ſay to a Juſtice of the Peace, that if He will not do them Juſtice, they will go and ſeek it elſewhere; or

Who uſe any unhandſome or unbecoming Geſtures before Him; or

Who ſay of Him behind his back by way of Slander, that He is an ignorant Fellow, and underſtands not the Statutes;

Those who delude his Authority by Complaints without Proſecution; or

Those who abuſe his Warrants by throwing them into Dirt, and treading them under their Feet, or by tearing and rending them to pieces, or who do not Execute Them;

All theſe (*r*) Offenders (and many more ſuch I could mention) may, by the Law, be bound to their Good-Behaviour or Impriſoned, Indicted and Fined, and of ſuch I would have you carefully Inquire and Preſent Them.

(r) Fitzherbert, Lambard, Dalton, *and other Authors of good and eſtabliſhed Authority, who have profeſſedly treated of the Office of a Juſtice of the Peace, do warrant theſe to be Offenders, and ſuch who merit the Puniſhments juſt now mention'd in this Charge.*

I muſt yet add this, that tho' I have omitted ſeveral Particulars, that does not excuſe You from Preſenting all other Offences that come to your Knowledge; which I doubt not but you will do without Favour, Affection, or Malice, that ſo your Oaths may be uprightly and honeſtly perform'd, God honoured, the King ſerved, and Right done to Yourſelves and Country. So now I leave you to your Inquiries.

FINIS.